IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.30580 OF 2002

T. Kalyanasundaram
S/o. late V.B. Thiruvenkadam
Accountant,
LIC Employees Co-operative Bank Ltd.,
United India Building,
Esplanade, Chennai 108. .. Petitioner

-Vs-

1. The Board of Directors,
rep. by its President,
LIC Employees Co-operative Bank Ltd.,
United India Building,
Esplanade, Chennai 108.

2. P. Shanmugasundaram
S/o. Palanisamy
Secretary (Incharge
LIC Employees Co-operative Bank Ltd.,
United India Building,
Esplanade, Chennai 108.

3. The Joint Registrar of
Co-operative Societies,
Tamil Nadu Consumers Co-operative
Federation Limited, Chennai 28. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V. Venkatasamy

For Respondent-1 : Mr.A.S. Balaji
Respondent-2 : Mr.P. Anbarasan
Respondent-3 : Mrs. Thenmozhi Sivaperumal
A.G.P.,

:J U D G M E N T

The petitioner has prayed for issuing writ of certiorarified mandamus for quashing the proceedings RC.No.4327/97/C2 dated 20.6.2002 and for a direction to the respondent No.1 to promote the petitioner as Secretary of LIC Employees Co-operative Bank Limited.

2. LIC Employees Co-operative Bank Limited is a society registered under the Co-operative Societies Registration Act. The petitioner joined the said organisation as Assistant on 18.6.1968 and in course of time, he was promoted as Accountant on 2.2.1992. The second respondent, who was appointed as Assistant Accountant on 20.3.1980 was promoted as Accountant on 12.12.1989. However, subsequently, when the post of Secretary fell vacant in the year 1990, the second respondent was posted to work as in-charge Secretary, but he was permitted to draw the salary paid to an Accountant. Subsequently, the petitioner made a representation stating that he should be appointed as Secretary as he had the requisite educational qualification as well as the requisite experience. However, the bank, which had permitted the second respondent to remain as in-charge Secretary, has illegally confirmed the second respondent in such post retrospectively from 1994 by resolution of the Board on 22.4.2001. The petitioner filed a Revision petition which has been rejected under the impugned order.

3. Petitioner has challenged the impugned order mainly on two grounds, firstly that as per bye-law, a person is required to be a Bachelor of Arts, Bachelor of Science and Bachelor of Commerce in order to become Secretary, but the second respondent is not holding any such degree. The other contention is to the effect that before becoming eligible to the post of Secretary, a person has to work as Accountant in the feeder category for a period of five years and since the second respondent, who was appointed as Accountant in the year 1989 had become in-charge Secretary with effect from 1990, did not have the requisite experience of five years as Accountant, he was not eligible for becoming Secretary.

4. It appears that before the Revisional authority the only question raised was relating to experience of the second respondent as an Accountant and it was contended that since the second respondent remained accountant for a period of one year and thereafter he was functioning as the in-charge Secretary, he did not have the requisite qualification of 5 years as Accountant for becoming the Secretary. It has to be noticed that at the time when the second respondent had become in-charge Secretary, he has worked for one year as Accountant, obviously at that stage he was not eligible to become a full-fledged Secretary and that is the reason why the second respondent, who was the senior most at that time, was allowed to function as the incharge Secretary by drawing the salary of Accountant. Merely because the second respondent had to function as in-charge Secretary because of the exigencies in the services, it cannot be said that he had ceased to be an Accountant and it is thus obvious that his experience as Accountant from the year 1989 has to be counted. In such view of the matter, the Board was justified in confirming the second respondent as regular Secretary with effect from 1994, by which

date the second respondent had completed 5 years of service. The contention that as soon as the second respondent became in-charge Secretary he ceased to be an Accountant cannot be upheld.

5. In addition to the contention raised before the Revisional authority and reiterated in the writ petition, a further contention has been raised to the effect that respondent No.2 did not have the requisite educational qualification. Since such a point was not raised before the earlier authority, in normal course, this point cannot be permitted to be taken for the first time in a writ of certiorari. Even otherwise, it appears that the second respondent is M.Cop. (Postgraduate Diploma in Co-operation and Rural Economics), which can be taken as a degree equivalent to Master□s degree. The qualification indicated in the bye law is that a person should have a degree in Bachelor of Arts, Bachelor of Science or Bachelor of Commerce must be understood in a generic sense to extend to any person holding a bachelor degree. Since the respondent No.2 is holding a Master degree, it is obvious that he had the requisite qualification.

6. For the aforesaid reasons, I do not find any merit in the writ petition, which is accordingly dismissed. No costs.

Index : Yes
Internet : Yes

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To

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